

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Kelly Services Inc.

Plaintiff

v.

A2Z Global Staffing Inc., Alexis J. O’Keefe, Allan J.
O’Keefe, Susan M. O’Keefe, and Daven Ricketts,,

Defendants

2:15-cv-01443-JAD-PAL

**Order Denying Motion for Default
Judgment Without Prejudice**

[ECF No. 24]

Kelly Services Inc. sued AZ Global Staffing Inc. and four of its employees and agents, Daven Ricketts and Allan, Alexis, and Susan O’Keefe, claiming that A2Z’s failure to perform under a secondary-staffing agreement—and the individual defendants’ intentional misrepresentations about that performance—cost Kelly nearly \$600,000.¹ Defaults have been entered against all defendants² except Allan O’Keefe, who has been dismissed from this action without prejudice.³ Kelly now moves for a default judgment against the defaulted defendants.⁴ Because Kelly failed to address the *Eitel* factors in its motion, I deny the motion without prejudice.⁵

Background

On November 9, 2012, Kelly entered into a secondary-supplier agreement with A2Z under which Kelly agreed to pay A2Z to supply employees to Kelly’s client, Gray Bar Electric.⁶ A2Z

¹ ECF Nos. 1, 31.

² ECF No. 27.

³ ECF Nos. 34, 48.

⁴ ECF No. 41.

⁵ I find this motion suitable for disposition without oral argument. L.R. 78-1.

⁶ ECF No. 1 at 2.

1 agreed to provide wages, benefits, and worker's-compensation benefits to these employees,⁷
 2 maintain appropriate worker's-compensation insurance coverage for these employees, and to defend
 3 Kelly and Gray Bar against any claims brought by these employees.⁸

4 In August 2014, an employee who was employed at Gray Bar under the A2Z-Kelly staffing
 5 agreement was allegedly injured on the job and then filed a worker's-compensation claim against
 6 Kelly in South Carolina.⁹ Kelly requested that A2Z defend it per the terms of their agreement.¹⁰
 7 A2Z's failure to respond to Kelly's requests prompted Kelly to investigate A2Z's insurance
 8 coverage.¹¹ Kelly discovered that A2Z failed to procure the required worker's-compensation
 9 coverage and that A2Z employees had falsified proof of that coverage.¹² Kelly requests \$648,254.20
 10 in damages, which is the amount of money it claims to have spent to defend the worker's-
 11 compensation lawsuit in South Carolina and the money it paid to A2Z under the staffing agreement.¹³

12 Discussion

13 A. Default judgment under FRCP 55

14 When the clerk has entered a default against a party, Rules 54(b) and 55 of the Federal Rules
 15 of Civil Procedure permit the court to enter a default judgment.¹⁴ The Ninth Circuit in *Eitel v.*
 16 *McCool* set forth seven factors that govern the district court's decision whether to enter a default
 17 judgment: (1) potential prejudice to the plaintiff; (2) the merits of the plaintiff's substantive claim;
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19 ⁷ *Id.*

20 ⁸ *Id.*

21 ⁹ *Id.* at 4.

22 ¹⁰ *Id.*

23 ¹¹ *Id.*

24 ¹² *Id.*

25 ¹³ ECF No. 41 at 3.

26 ¹⁴ *Eitel v. McCool*, 782 F.2d at 1470, 1471 (9th Cir. 1986); *Trustees of the Bricklayers & Allied*
 27 *Craftworkers Local 13 Defined Contribution Pension Trust for S. Nev. v. Tumbleweed Dev., Inc.*,
 28 2013 WL 143378, at *2 (D. Nev. Jan. 11, 2013) (citing *Eitel*).

1 (3) the sufficiency of the complaint; (4) the amount of money at stake in the action; (5) the potential
2 disputes as to material facts; (6) whether the default was due to excusable neglect; and (7) the strong
3 federal policy favoring adjudications on the merits.¹⁵

4 Except for the amount of money at stake, Kelly's motion does not address the *Eitel* factors.
5 Kelly has thus left me without the guidance and information I need to determine whether a default
6 judgment is warranted. I therefore deny Kelly's motion without prejudice to its ability to file a new
7 motion that addresses the *Eitel* factors and explains why these factors warrant the judgment that
8 Kelly requests.¹⁶

9 **Conclusion**

10 Accordingly, IT IS HEREBY ORDERED that **Kelly's motion for entry of default**
11 **judgment [ECF No. 41] is DENIED without prejudice.**

12 Dated this 21st day of June, 2016.

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14 _____
15 Jennifer A. Dorsey
16 United States District Judge
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25 ¹⁵ See *Eitel*, 782 F.2d at 1471–72.

26 ¹⁶ See, e.g., *Rimlinger v. Shenyang 245 Factory*, 2014 WL 2527147 (D. Nev. June 4, 2014); *Neumont*
27 *University, LLC v. Little Bizzy, LLC*, 2014 WL 2112938 (D. Nev. May 20, 2014); *U.S. S.E.C. v.*
28 *Brandonisio*, 2013 WL 5371626 (D. Nev. Sept. 24, 2013); *Trustees of Teamsters Local 631 Sec.*
Fund for Southern Nevada v. Knox Installation-Dismantling and Services, Inc., 2013 WL 4857897
(D. Nev. Sept. 9, 2013).